Revised August 1966

IMPORTANT — READ INSTRUCTIONS ON BACK BEFORE FILLING OUT THIS FORM. HC-63269...$1.00

Declaration of Owner of Underground Water Right

STATE ENGINEER OFFICE ALBUQUERQUE, NEW MEX. APR 8 All: 58

B-390
BASIN NAME

Declaration No. MISCL. 32-4 Amended Date received

STATEMENT

1. Name of Declarant Fernandez Co., Ltd.
   Mailing Address San Mateo, New Mexico
   County of Valencia, State of New Mexico
2. Source of water supply shallow water aquifer
   (artesian or shallow water aquifer)
3. The well is located in the NW ¼, NE ¼, NE ¼ of section 18, Township 13N, Range 8W, N.M.P.M. or Tract Map No. on land owned by
4. Description of well: date drilled See Item #8 below driller depth feet. outside diameter of casing inches; original capacity gal. per min.; present capacity gal. per min.; pumping lift feet; static water level feet (above) (below) land surface; make and type of pump Irrigation Pump: Fairbanks-Morse 5354 Ser. #H2D32275
   make, type, horsepower, etc., of power plant 40 HP Centrifugal-discharge measured 900 gpm T. P. Pump
   Fractitional or percentage interest claimed in well 100%
5. Quantity of water appropriated and beneficially used 2.1 AF/acre (acre feet per acre) 1326 (acre feet per annum) for irrigation of permanent pasture purposes.
6. Acreage actually irrigated 660 acres, located and described as follows (describe only lands actually irrigated):

Subdivision	Sec.	Twp.	Range	Acres Irrigated	Owner
W½W½SW¼SW¼	16	13N	8W	10	Fernandez Co. Ltd.
SE¼	17	"	"	160	" "
E½E½NW¼	20	"	"	20	" "
NE¼, N½SE¼	20	"	"	240	" "
N½S½SE¼	20	13N	8 W	40	" "
E½E½NE¼SW¼	20	"	"	10	" "
S½NW¼NW¼SW¼NW¼	21	"	"	60	" "
W½SW¼, W½E½SW¼	21	"	"	120	" "

(Note: location of well and acreage actually irrigated must be shown on plat on reverse side.)

7. Water was first applied to beneficial use May (month) 1 (day) 1975 (year) and since that time has been used fully and continuously on all of the above described lands or for the above described purposes except as follows: except 5 days cessation due to pump failure.

8. Additional statements or explanations Water is produced from dewatering of Johnny M. Mine. Production Zone 1150-1304 (below Mancos) water for irrigation is pumped from the tailings pond through a 12" pipeline to the irrigationed area.

I, Harry F. Lee being first duly sworn upon my oath, depose and say that the above is a full and complete statement prepared in accordance with the instructions on the reverse side of this form and submitted in evidence of ownership of a valid underground water right, that I have carefully read each and all of the items contained therein and that the same are true to the best of my knowledge and belief.

Fernandez Co. Ltd., declarant.
by: Harry F. Lee

Subscribed and sworn to before me this 2 day of June, A.D. 1976

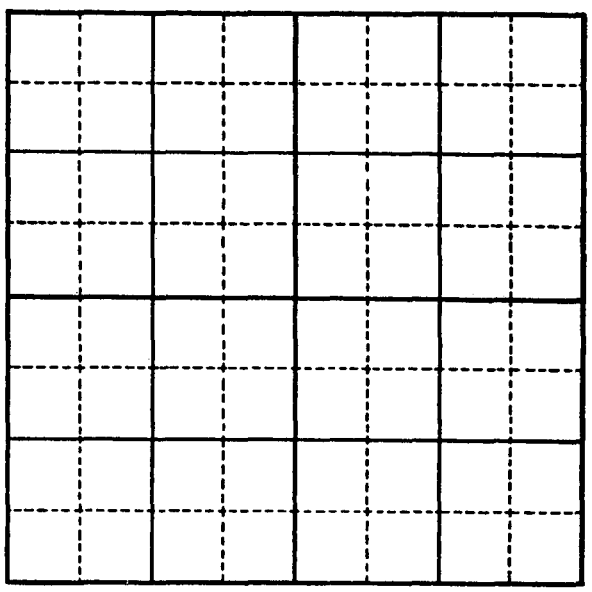
My commission expires FILED Notary Public

UNDER NEW MEXICO LAW A DECLARATION IS ONLY A STATEMENT OF DECLARANT'S CLAIM. ACCEPTANCE FOR FILING DOES NOT CONSTITUTE APPROVAL OR REJECTION OF THE CLAIM.

90041095

Locate well and areas actually irrigated as accurately as possible on following plat:

Section (s) ....., Township ....., Range ..... N. M. P. M.



INSTRUCTIONS

Declaration shall be executed (preferably typewritten) in triplicate and must be accompanied by a $1.00 filing fee. Each of triplicate copies must be properly signed and attested.

A separate declaration must be filed for each well in use.

All blanks shall be filled out fully. Required information which cannot be sworn to by declarant shall be supplied by affidavit of person or persons familiar with the facts and shall be submitted herewith.

Secs. 1-3. Complete all blanks.

Sec. 4. Fill out all blanks applicable as fully as possible.

Sec. 5. Irrigation use shall be stated in acre feet of water per acre per year applied on the land. If used for domestic, municipal. or other purposes, state total quantity in acre feet used annually.

Sec. 6. Describe only the acreage actually irrigated. When necessary to clearly define irrigated acreages, describe to nearest 2½ acre subdivision. If located on unsurveyed lands. describe by legal supdivision "as projected" from the nearest government survey corners, or describe by metes and bounds and tie survey to some permanent, easily-located natural object.

Sec. 7. Explain and give dates as nearly as possible of any years when all or part of acreage claimed was not irrigated.

Sec. 8. If well irrigates or supplies supplemental water to any other land than that described above, or if land is also irrigated from any other source, explain under this section. Give any other data necessary to fully describe water right.

If additional space is necessary, use a separate sheet or sheets and attach securely hereto.

To: Tim Smith
for your handling

SEP 23 12:02

ALBUQUERQUE, N. MEX.

STATE ENGINEER OFFICE
MEMO

DATE ______

TO: ______

( ) For Your Information ( ) Note & Return

( ) For Your Files ( ) Circulate

( ) For Your Handling ( ) ______

REMARKS: [illegible]

page 2 [illegible]

send a copy to Smith

UNITED STATES

ENVIRONMENTAL PROTECTION AGENCY

REGION VI

IN THE MATTER OF:	*	
Ranchers Exploration and Development Corporation, Johnny M Mine, New Mexico	*	INITIAL DECISION
NPDES Permit NM 0026573	*	

FINDINGS

1. Ranchers Exploration and Development Corporation (Ranchers) owns and operates the Johnny M uranium mine in McKinley County, New Mexico.

2. Groundwater containing elevated levels of uranium, radium and other radioactive elements infiltrates the depths of the Johnny M Mine from which it is pumped to surface ponds, impounded and treated (Kaufman, Direct Testimony, Tr. 28, 29; Robinson, Tr. 321).1/

3. Some of the water in the ponds seeps back into the earth and some is mixed with mine tailings to form a slurry which is introduced into the mine as backfill (Kaufman, Tr. 30, 42-47).

4. Water remaining in the ponds is conveyed through an asbestos pipe more than a mile long and discharged to an open ditch at an average rate of approximately 1,300 gallons per minute (Kaufmann, Tr. 31, 32; Nylander, EPA-SF 5, Tr. 388, 399).

5. The discharged water flows down the ditch for approximately 1/4 mile and into the bed of San Mateo Creek, an incised arroyo or gully formed by running water from melting snow, local springs and stormwater runoff from nearby mountains (Kaufman, Tr. 32; Rouse, Tr. 455; Nylander, EPA-SF 5, Tr. 389; Brooks, Tr. 238, 239; EPA-NMEID J-1).

6. As it flows down San Mateo Creek, Ranchers' wastewater evaporates and infiltrates the underlying alluvial soil. Thus,

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1/ Generally, citations to the record include, when appropriate, the witness's name, followed by the exhibit identification and/or transcript pages of his testimony. To the extent possible, exhibits are identified in the same manner used by the parties.

the distance the wastewater travels continuously downstream is dependent upon the amount of rainfall upstream. In the predominantly arid climate of the area, the wastewater often does not reach the United States Geological Survey gauge station located in the bed of San Mateo Creek approximately 2 1/2 miles below its junction with the ditch (Nylander, EPA-SF 5, Tr. 165, 191, 192, 207, 375; Brooks, Tr. 238, 241-246; Ranchers Rebuttal 1).

7. When San Mateo Creek flows with significant quantities of storm runoff, however, it transports Ranchers' discharge past the gauge station to the confluence of Arroyo del Puerto, where the creek's flow may be augmented by runoff from another drainage basin and discharge from another uranium mine. This combination of flows has been observed and photographed from State Highway 53 which crosses Arroyo del Puerto a short distance above its junction with San Mateo Creek (Nylander, Tr. 184; EPA-NMEID R-1, S-1, T-1; Carver, EPA-SF 6; Brooks, Tr. 238-241; Dudley, EPA-SF 8, Tr. 266, 267, 274).

8. When it contains enough flow, San Mateo Creek continues in a southwesterly course from its confluence with Arroyo del Puerto for a distance of approximately 3 1/2 miles where it crosses the boundary between McKinley and Valencia Counties near "Deadman's Curve," a bend in Highway 53. At Deadman's Curve, culverts have been constructed under the road to accomodate the flow of water but, on occasion, the highway has been blocked by the waters of San Mateo Creek (EPA-SF 4; McBride, Tr. 286-288; Dudley, Tr. 297; Brooks, Tr. 239-241, EPA-NMEID K-1; SW-E-2).

9. Approximately 1 1/2 miles southwest of Deadman's Curve, on the Bert Roundy Ranch, San Mateo Creek spreads out into an area of relatively flat drainage with poorly defined channels. Dams have been constructed in this area to divert the creek's water promoting the growth of cattle forage. Some of the creek's water flows into depressions in this area, forming pools of standing water (Dudley, EPASF 8; EPA-NMEID N-1 through Q-1; Nylander, EPA-SF 5; Tr. 192, 195, 207, 208; EPA-SF 4; Rouse, Tr. 461-463).

S.E.O. permit to be required

10. Any flow which is not diverted or impounded on the Bert Roundy Ranch is usually stopped further downstream by a tailings pile and pond which United Nuclear-Homestake Partners (Partners) has constructed across the former channel of San Mateo Creek (EPA-SF 4; Rouse, Tr. 55). Following heavy rains upstream, flow in San Mateo Creek has been observed to terminate at a road immediately flanking the northern side of the Partners' tailings pile (EPA-SF 4; Rouse, Tr. 55; Carver. Tr. 261; SW-0; SW-E-3).

11. Approximately every five years, however, an especially heavy rainfall occurs upstream, causing water from San Mateo Creek to continue past the Partner's pile and into the Rio San Jose near the Zuni View Trailer Park near the Village of Grants, New Mexico. Because the creek's natural channel has

been obliterated by agricultural and residential development below the Partner's pile, the water follows roadbeds and flows across open fields in this area, cutting a new channel in the process (Carver, EPA-SF 6; Nylander, EPA-SF 5; McBride, EPA-SF 7; Robinson, SW-O, Tr. 341-344; EPA-NMEID O through T; EPA-NMEID V-1 through I-2).

12. Rio San Jose is a tributary of the Rio Puerco which, in turn is a tributary of the Rio Grande, an interstate water (Rouse, Tr. 444-446; Nylander, EPA-SF 5; EPA-NMEID J-2).

13. When water evaporates from or percolates into the bed of San Mateo Creek, some of the elements of the Ranchers' discharge are deposited at or near the surface of the bed, where they are available for transport further downstream by subsequent flows (Rouse, direct testimony, Tr. 96, 97; Nylander, EPA-SF 5).

14. Some water percolating into the bed of San Mateo Creek enters the perched water table and migrates through subsurface alluvial soils to reemerge as springs or seeps along the bank of the Rio San Jose (Rouse, direct testimony, Tr. 84; Nylander EPA-SF 5, Tr. 196, 198, 199).

15. Although affected by a number of variables such as distance between the percolation point and reemergence at Rio San Jose, the underground travel time of this water is probably between 72 and 1735 years (Nylander, EPA-SF 5, Tr. 198, 199, 209, 210, 382, 384; Rouse, Direct Testimony).

16. The Fernandez Ranch is immediately adjacent to Ranchers' discharge point. Downstream from this location are the Sandoval and Marquez Ranches. The Bert Roundy Ranch is located on San Mateo Creek below its confluence with Arroyo del Puerto and north of the Partner's mill and tailings pile (Nylander, EPA-SW 5; EPA-SW 4; SW-G).

17. Cattle of the Fernandez Ranch have been observed drinking water from Ranchers' 'discharge ditch and grazing along its banks (Robinson, SW-O; SW-H-1; SW-H-2).

18. The Fernandez Ranch shipped at least 1077 cattle out of New Mexico from 1975 through 1977 (Robinson, SW-O; SW-J-1; SW-J-2; SW-J-5; SW-J-6).

19. Cattle from the Sandoval and Marquez Ranches drink from San Mateo Creek (Robinson, SW-O; Nylander, EPA-SW 5).

20. Bert Roundy grazes cattle along San Mateo Creek north of The Partners' uranium mill and tailings pond, where they drink water from the creek and consume grass irrigated with such water (Nylander, EPA-SF 5, Tr. 192, 193, 207; SW-G; Rouse, Tr. 461).

21. Mr. Roundy ships cattle to the Karler Packing Company in

Albuquerque, New Mexico for slaughter (Nylander, EPA-SF 5; EPA-NMEID-H through M).

22. The Karler Packing Company is a slaughterhouse which ships meat out of New Mexico (Nylander EPA-SF 5, EPA-NMEID N).

23. Radium is a bioaccumulative element, i.e., it is concentrated in the tissues of animals, including cattle, which ingest it and further concentrated in the tissues of animals, including humans, further up the food chain (Hyder, SW-N, Tr. 148).

CONCLUSIONS

1. Section 304(f)(2) of the Federal Water Pollution Control Act Amendments (FWPCA) provides no blanket exemption to federal regulation of mining operations. When operations discharge pollutants from "any discernible, confined and discrete conveyance," they are "point sources."

2. The Johnny M Mine is a "point source."

3. "Navigable waters" are included in the generic term "water" in FWPCA §502(6).

4. Radioactive materials and other industrial waste discharged into a "navigable water" are "pollutants" within the meaning of FWCPA §502(6).

5. The Johnny M Mine discharges "pollutants."

6. Intrastate waters which are utilized for industrial purposes by downstream industry in interstate commerce are "navigable waters" subject to federal regulation pursuant to FWPCA.

7. Use of water for production of agricultural goods, including cattle, is utilization "for industrial purposes" under 40 CFR 125.1(p)(6).

8. A cattle ranch which produces cattle for slaughter and subsequent interstate shipment is "industry in interstate commerce" under 40 CFR 125.1(p)(6).

9. In NPDES Adjudication, burden of proof and of producing evidence of disputed facts is requestor's.

10. San Mateo Creek is a "navigable water" within the ambit of 40 CFR 125.1(p)(6).

11. Tributaries of interstate waters are "navigable waters" subject to federal regulation pursuant to FWPCA.

12. Fact that intermittent stream flows underground for part of its length is irrelevant to the issue of whether or not

it is a "tributary" pursuant to 40 CFR 125.1(p)(2).

13. Frequency and speed of flow are irrelevant to the issue of whether or not intermittent stream is a "tributary" pursuant to 40 CFR 125.1(p)(2).

14. San Mateo Creek is a "navigable water" within the ambit of 40 CFR 125.1(p)(2).

15. Discharges of pollutants from the Johnny M Mine to San Mateo Creek are subject to regulation pursuant to FWPCA.

DISCUSSION

This is an initial decision on an NPDES permit adjudication held pursuant to 40 CFR 125.36.[2]/ Permittee Ranchers raises the following jurisdictional issues: (1) whether or not the Johnny M Mine is a "point source," (2) whether or not the discharge from the Johnny M Mine is a "pollutant" and (3) whether or not San Mateo Creek is a "navigable water."[3]/ I answer each question in the affirmative.

I. THE JOHNNY M MINE IS A POINT SOURCE

Section 502(14) of the Federal Water Pollution Control Act Amendments of 1972 (FWPCA), 33 USC 1362(14), defines "point source" as:

> any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch...from which pollutants are or may be discharged.

Ranchers' Johnny M Mine discharges mine water through a pipe and ditch, specific examples of "point sources" in the Act. Ranchers argues, however, that the Johnny M Mine can not be classified as a point source because FWPCA §304(f)(2)(B), 33 USC 1314(f)(2)(B)[4]/ lists "mining activities" as nonpoint sources not subject to federal regulation. This argument has been specifically rejected in United States v. Earth Sci-

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[2]/ EPA regulations cited herein are those in effect at the time of the NPDES determination, May 25, 1976.

[3]/ Ranchers also sought to question the evidentiary base for published EPA effluent limitations applicable to the mining and milling point source category. Such a challenge may only be entertained in a U. S. Circuit Court of Appeals. In Re United States Steel Corporation, 2 Gen. Couns. Op. 97 (NPDES Decision 23, July 3, 1975). The Presiding Officer correctly struck this issue.

[4]/ At the time of the NPDES adjudication, the applicable section of the Act was 304(e)(2)(B), 33 USC 1314(e)(2)(B). The 1977 Clean Water Act added a new section 304(e), resulting in the citation used in the text above.

ences, 599 F.2d 368 (10th Cir. 1979). The Tenth Circuit stated at 599 F.2d 373:

> We believe it contravenes the intent of FWPCA and the structure of the statute to exempt from regulation any activity that emits pollution from an identifiable point. Therefore, we hold the district court erred interpreting 33 U.S.C. §1314(f) as enumerating nonpoint source exemptions from FWPCA enforcement regulations. Mining and other categories listed in § 1314(f)(2) may involve discharges from both point and nonpoint sources, and those from point sources are subject to regulation.

I conclude that the Johnny M Mine is a point source.

II. RANCHERS DISCHARGES POLLUTANTS

FWPCA §502(6), 33 USC 1362(6) provides in part:

> The term "pollutant" means...radioactive materials...and industrial...waste discharged into water...

Although Ranchers concedes that its discharge contains radioactive materials and other industrial waste, it argues that these substances are not "discharged into water" and are therefore not "pollutants." In support of this argument, Ranchers contends that there is no existing flow in San Mateo Creek at the point of dicharge.5/ This argument, which assumes that "water" is a narrower term than "navigable water," lacks merit.

FWPCA does not define the term "water." It does, however,

5/ In fact, there is water at the discharge site on occasion. In times of thunderstorm activity, water has been observed flowing in San Mateo Creek both above and below its confluence with Ranchers' discharge (Dudley, EPA-SF 8, Tr. 297-299; EPA N-1 through U-1; Brooks, Tr. 238). These sitings reasonably imply flowing water at the confluence. Ranchers attributes these sitings to upstream discharges of the Mount Taylor Mine, since discontinued. While the Mount Taylor Mine discharges formerly contributed up to 14 CFS to the flow of San Mateo Creek above the Johnny M Mine, it was not the only source of such flow, as convincingly evidenced by an estimated flow of 628 CFS on one occasion 2 1/2 miles below the Ranchers' 2.8 CFS discharge (Nylander, EPA-SF 5, Tr. 206,376, 377; Rouse, Tr. 419, 421). Moreover, one of the witnesses observed flow above the Rancher's discharge site before the existence and after cessation of the Mount Taylor Mine discharge (Brooks, Tr. 238).

define "navigable waters" in §502(7), "contiguous zone" in §502(9), and "ocean" in §502(10). At a minimum,[6]/ the generic term "water" in §502(6) encompasses each of these defined specific classes, any of which may be degraded by the addition of "pollutants." Because San Mateo Creek is a "navigable water," as discussed below, it is necessarily included in the broader term "water." I conclude that Ranchers discharges "pollutants."

III. SAN MATEO CREEK IS A "NAVIGABLE WATER"

It is well settled that the term "navigable waters" as used in FWPCA encompasses all waters capable of affecting interstate commerce. See In Re Central Illinois Public Service Co., 2 Gen. Couns. Op. 27 (NPDES Decision 7, April 8, 1975); In Re Ely, Nevada, 2 Gen. Couns. Op. 129 (NPDES Decision 30, September 18, 1975), In Re Phoenix, Arizona, 2 Gen. Couns. Op. 283 (NPDES Decision 53, December 17, 1976); In Re Kennecott Copper Corporation, 2 Gen. Couns. Op. 431 (NPDES Decision 73, December 15, 1978). The applicable regulatory definition at 40 CFR 125.1(p) provides in part:

> The term "navigable waters" includes: ...(2) Tributaries of navigable waters of the United States...(6) Intrastate lakes, rivers, and streams which are utilized for industrial purposes by industries in interstate commerce.

Although the regulatory definition is inclusive, In Re Ely, Nevada, supra; In Re Phoenix, Arizona, supra, it has been applied exclusively in In Re Kennecott Copper, supra. In an abundance of caution, I here apply the regulation as if it required an actual, rather than potential, nexus with interstate commerce.

Downstream use for production of agricultural goods is utilization "for industrial purposes" within the ambit of 40 CFR 125.1 (p)(6). See In Re Buckeye, Arizona, 2 Gen. Couns. Op. 395 (NPDES Decision 67, November 11, 1977); In Re Phoenix, Arizona, supra. Although Ranchers cites In Re City of Ely, Nevada, supra, as contrary authority, there was no downstream user, agricultural or otherwise, upon which jurisdiction could have been based in that decision. It is not relevant here. See also In Re Kennecott Copper Corporation, supra. In the present case, there is ample evidence of downstream agri-

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[6]/ Groundwater is also "water." Otherwise, Congress would have had no need to exempt constituents of certain discharges to groundwater from the definition of "pollutant." See FWPCA §502(6)(B). I need not here discuss whether or not groundwater is a "navigable water" or an independent classification of "water."

cultural use. Cattle from the Bert Roundy Ranch, located between "Deadman's Curve" and the Partner's pile, drink water from San Mateo Creek and eat grass irrigated with its waters (Nylander, EPA-SF 5; Rouse, Tr. 461; EPA-SF 4; SW-G). Mr. Roundy's utilization of San Mateo Creek water for "industrial purposes" is underscored by his construction of spreader dams to increase the extent of that utilization. That his ranch is an industry "in interstate commerce" is demonstrated by Mr. Roundy's sale of cattle to the Karler Packing Company in Albuquerque, New Mexico for slaughter and resale in interstate commerce (Nylander, EPA-SF 5; EPA-NMEID K). I conclude that San Mateo Creek is a stream utilized for industrial purposes by an industry in interstate commerce and thus a "navigable water" as defined in 40 CFR 125.1 (p)(6).7/

Ranchers argues that there is no evidence in the record that any particular cow has left New Mexico after drinking San Mateo Creek water. Because 40 CFR 125.1(p)(6) on its face requires only industrial utilization of the disputed water by an interstate industry, not interstate shipment of the fruits of that utilization, the lack of such evidence is immaterial to my decision. While agricultural products shipped in interstate commerce supported jurisdiction in In Re Buckeye, Arizona, supra, and in In Re Phoenix, Arizona, supra, that interstate shipment was only necessary to establish the interstate nature of the industries involved.

Even if 40 CFR 125.1(p)(6) requires utilization of water to produce goods actually shipped interstate, my decision is unaffected. While there is no evidence that "interstate cattle" drink from San Mateo Creek, neither is there evidence that they do not. The burden of proof and of producing evidence is Ranchers'. See 40 CFR 125.36(i)(1). Accordingly, factual issues upon which the record is silent must be resolved against it.

Having concluded that San Mateo Creek is a "navigable water" on the basis of downstream industrial use, I need not belabor other facts supporting EPA jurisdiction. I note, however,

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7/ The Bert Roundy Ranch is not alone in watering its cattle along San Mateo Creek. Cattle from the Carlos Sandoval, Randolph Otero and Isabel Marquez Ranches quench their thirst from its intermittent waters above the Roundy Ranch and below Ranchers' discharge point (Robinson, SW-O; SW-G). Indeed, Cattle of the Fernandez Ranch, which shipped at least 1077 head out of New Mexico from 1975 through 1977, have been observed quaffing Ranchers' discharge even before it enters San Mateo Creek (Robinson, SW-O; SW-J1; SW-J2; SW-J3; SW-J4; SW-J5; SW-J5; SW-J6; SW-J7; SW-J8). While not essential to my conclusion that San Mateo Creek is a "navigable water," this evidence provides additional documentation of the creek's value to the cattle industry and the interstate nature of that industry.

that the waters of San Mateo creek connect with the Rio San Jose through occasional surface (Nylander, EPA-SF 5, Tr. 211-214, 372-374, 382; McBride, EPA-SF 7; EPA N-2; Robinson, SW-0, Tr. 341-344, 346,347; Rouse, Tr.100) and constant subsurface flows (Nylander, EPA-SF 5, Tr. 196, 198, 199; Rouse, direct testimony, Tr. 84). As the waters of Rio San Jose ultimately flow in the Rio Grande, itself a navigable water of the United States (Nylander, EPA-SF 5; EPA L-1, M-1, J-2: Rouse, Tr. 444-446), San Mateo Creek is a tributary of a navigable water of the United States in accordance with 40 CFR 125.1(p)(2). See In Re Phoenix, Arizona, 2 Gen. Couns. Op. 405 (NPDES Decision 70, August 9, 1978). The infrequency of the surface flow and the temporal remoteness of the subsurface flow are irrelevant to that conclusion. See In Re Phoenix, Arizona, 2 Gen. Couns. Op. 283,290 (NPDES Decision 53, December 17, 1976).

September 9, 1980

ADLENE HARRISON
Regional Administrator

April 9, 1976

FILE: ~~MISCL 32-4 Amended~~
B-390

'76 APR 21 AM 11 26

STATE ENGINEER OFFICE

Mr. Harry F. Lee
Fernandez Co., Ltd.
San Mateo , New MExico 87050

Dear Mr. Lee:

Enclosed is your copy of the above-numbered Declaration of Owner of Underground Water Right, which has been accepted for filing.

Please refer to this number in any future correspondence concerning this file.

Very truly yours,

J. L. Williams
Supervisor, District 1

mlh
Encl: Decl.

cc: Santa Fe w/Decl.

November 15, 1978

Mr. Owen M. Lopez
Attorney at Law
325 Paseo de Peralta
Santa Fe, New Mexico 87501

REFERENCE: Fernandez Company

Dear Mr. Lopez:

On August 30, 1978 I followed the discharge of water from the Gulf San Mateo mine by air. The water is discharged through a pipeline to a point on the downstream side of the San Lucas Dam at which point the water flows into Cebolleta Creek. From that point the water flows down the Cebolleta drainage and a large part of the water is picked up by the works of the Fernandez Company, more or less outlined in Certificate of Construction No. 2479 on file in the office of the State Engineer.

It appeared from observations and photographs made that water is now being used for the irrigation of land in excess of those lands set forth in License to appropriate water No. 2479, granted by the State Engineer on the 19th day of October 1946.

It is the opinion of this office that water dumped into a water course becomes public water. In order to appropriate water in excess of the existing right an application for permit to appropriate public surface waters must be granted by the State Engineer. It is also the opinion of this office that any use of water by the Fernandez Company in excess of the rights defined in said License No. 2479 is in violation of the water laws of the State of New Mexico, and we must insist that use of water in excess of that amount be discontinued at once.

If you have any questions regarding this matter, you may contact Brad Compton at the office of the State Engineer, Bataan Memorial Building, Santa Fe, telephone 827-2424, or me at the address and telephone number shown above.

Very truly yours,

J. L. Williams
Supervisor, District 1

JLW/mlh
Encl: Cert. of Constr. No. 2479
License to Appropriate No. 2479
Manual of Rules & Regulations (surface water)

cc: Fernandez Company, San Mateo, N.M. (Certified mail)

Brad Compton, SEO, Santa Fe

FILE: MISCL 32-4 Amended

April 9, 1976

Mr. Harry F. Lee
Fernandez Co., Ltd.
San Mateo , New MExico 87050

Dear Mr. Lee:

Enclosed is your copy of the above-numbered Declara[...] Owner of Underground Water Right, which has been for filing.

Please refer to this number in any future co[...] concerning this file.

Very t[...]

mlh
Encl: Decl.

cc: Santa Fe w/Decl.

B-390

IN THE MATTER OF:

Ranchers Explo[...]

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION VI

* * * * * * * *

INITIAL DECISION

B 31

FINDINGS

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[...]d, testimony. To the
[...]d in the same manner

NEW MEXICO
STATE ENGINEER OFFICE
3311 CANDELARIA, NE SUITE A
ALBUQUERQUE, NEW MEXICO 87107

ALBUQUERQUE
OCT 4 '91
N. MEX.

U.S. POSTAGE
0.75
METER
F 3002509

Gary Gambel
HECLA
6500 Mineral Drive
Box C8000
Coeur d'Alene, Idaho 83814

irrigationed area.

Harry F. Lee being first duly sworn[...]
[...]se and say that the above is a full and complete statement prepared in accordance with the in[...]
[...]side of this form and submitted in evidence of ownership of a valid underground water right[...]
[...]h and all of the items contained therein and that the same are true to the best of m[...]

by: [...]

[...]to before me this [...]

April 9, 1976

FILE: ~~MISCL 32-4 Amended~~
B-390

'76 APR 21 AM 11 26

STATE ENGINEER OFFICE

Mr. Harry F. Lee
Fernandez Co., Ltd.
San Mateo , New MExico 87050

Dear Mr. Lee:

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J. L. Williams
Supervisor, District 1

mlh
Encl: Decl.

cc: Santa Fe w/Decl.

B-390

March 30, 1976

FILE: ~~Misel. 32-4 Amended~~

B-390

Mr. Harry E. Lee
Fernandez Co., LTD.
San Mateo, New Mexico 87050

Dear Mr. Lee:

Enclosed are copies of amended Declaration of Underground Water Right for the irrigated permanent pasture in Sections 16, 17, 20, and 21, T3N, R8W. The information on this declaration was taken from the declaration you filed in September 1975 with the added information that the source of the water is the Johnny M. Mine.

If this meets with your approval, please sign before a notary and submit with a $1.00 filing fee.

Also enclosed are copies of two reports written to this file for your information.

If it is convenient, next summer, when the contrast between the irrigated and non-irrigated pasture is best seen; you may wish to notify this office. If possible we will send someone out to more accurately verify the irrigated area.

If you have any questions, please contact this office.

Very truly yours,

J. L. Williams
Supervisor, District 1

By: _____
J. T. Everheart

JTE/mlh
Encl: Declaration
Field check reports

cc: Santa Fe

March 22, 1976

File: ~~Misc. 32-4~~ B-390

J. T. Everheart

Johnny M.Mine

On March 19, 1976, the writer contacted Mr. Paul Mathews of Ranchers Exploration and Development Corporation by telephone and questioned him about the water producing characteristics of the Johnny M. Mine.

Mr. Mathews stated that the mine was 1304 feet deep; that the production zone was sands between the base of Mancos, 1150 feet, and total depth of shaft; that at the present time the mine produced an estimated 700-800 gpm.

Mr. Mathews stated that the only aquifer encountered above the ore zone was the Dakota sandstone; that the shaft was grouted and cemented through the Dakota but that he estimated the Dakota was producing between 10-15 gpm.

The estimated life of the mine is 5-10 years depending on market etc.

This mine is an estimated 5 miles from community of San Mateo.

Jim Everheart

JTE/mlh
cc: Santa Fe

No. 63269

STATE ENGINEER OFFICE

ITA FE, NEW MEXICO

OFFICIAL RECEIPT

CONTROL NUMBER

DATE April 8, 1976

FILE NO	AM'T REC'D	GW	SW	TOTAL
	CASH	X		$1.00
Miscl 32-4 Amended	CHECK			

BANK

CASH: One dollar only

FOR PAYMENT AS INDICATED BELOW

Declaration

NAME AND ADDRESS

Fernandez Co., Ltd.
San Mateo, New Mexico

FOR USE BY SANTA FE OFFICE ONLY

WATER RIGHTS

DATE	EARNED GW	EARNED SW	REFUND	TRANSCRIPT EXP.	BALANCE

FOR USE BY ADMINISTRATIVE DIVISION